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Our Ref.: 4380-107
Your Ref.: 09/604,082 Date: July 5, 2005
To: Commissioner for Patents c/o Examiner Vera AFREMOVA
Firm: U.S. Patent & Trademark Office
Facsimile No.: 571.273.8300
From: Willem F. Gadiano

Number of Pages (including cover sheet): 17
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ewm**FACSIMILE OPERATOR****ATTACHMENT/S:**

- 1. Transmittal of Appeal Brief with request for 4-month Extension of Time (2 pages);**
- 2. Appeal Brief (5 pages); and**
- 3. Amendment After Final Rejection (9 pages)**

CONFIDENTIALITY NOTE

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Date: July 5, 2005By: [Signature]
William F. Gadano, Reg. No. 37,136**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

BESSETTE et al.

Atty. Ref.: 4380-107; Confirmation No. 4329

Appl. No. 09/604,082

TC/A.U. 1651

Filed: June 27, 2000

Examiner: Afremova, Vera

For: PESTICIDAL COMPOSITIONS CONTAINING ROSEMARY OIL

* * * * *

TRANSMITTAL OF APPEAL BRIEFHonorable Commissioner for Patents
Mail Stop Appeal Brief-Patents

Sir:

Submitted herewith is Appellant(s) Appeal Brief in support of the Notice of Appeal filed January 3, 2005, and an Amendment After Final Rejection. Please grant a **four-month extension of time** (if currently deemed necessary and not previously paid for) for entry of this communication. Please charge the **small entity** Appeal Brief and Extension of Time fees (**small entity**) to Deposit Account **14-1140**.

BESSETTE et al.
Appl. No. 09/604,082

Atty. Docket No. 4380-107

To the extent necessary, please grant any further extension of time under 37 C.F.R.
1.136 deemed necessary. Please charge any shortage in fees due, or any excess fees paid,
to Deposit Account 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:



Willem F. Gadiano

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Date:

July 5, 2005

By:

Willem F. Gadiano, Reg. No. 37,136

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Date: Jul 5 2005By: William F. Gadiano, Reg. No. 37,138**RECEIVED**
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JUL 05 2005

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

BESSETTE et al.

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* * * * *

APPEAL BRIEF**Mail Stop Appeal Brief-Patents**

Honorable Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Appellants herein appeal from the Examiner's final rejection of the pending claims. Appeal is timely and proper pursuant to 37 CFR § 1.191(a). This Appeal Brief is submitted in support of the Notice of Appeal filed January 3, 2005. Appellants concurrently file an Amendment After Final Rejection solely in an effort to advance prosecution and obviate the need for this Appeal.

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REAL PARTY IN INTEREST

This application is assigned to EcoSmart Technologies, Inc., by assignment recorded on June 8, 2001, at Reel 011908, Frame 0700.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 4, 19 and 45 are pending. Claims 1-3, 5-18, 20-44 and 46-49 are canceled without prejudice or disclaimer of the subject matter they contain. A copy of the pending claims (as amended in the concurrently filed Amendment After Final Rejection) is found in APPENDIX A attached hereto.

STATUS OF AMENDMENTS

All amendments filed in this case before July 2, 2004, have been entered. An Amendment After Final Rejection is being concurrently filed with this Appeal Brief to overcome the grounds of rejection as set forth in the final Office Action from which this appeal was taken.

SUMMARY OF INVENTION

The presently claimed invention is directed to methods for controlling (knocking down and killing) household pests comprising applying to a location where control of household pests is desired a pesticidally-effective amount of a composition comprising a pesticidally acceptable carrier and a pesticidally active ingredient *consisting of* either (1) rosemary oil and

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phenethyl propionate; (2) rosemary oil, peppermint oil and phenethyl propionate; or (3) rosemary oil and peppermint oil.

ISSUES

1. Should the currently pending claims remain rejected under 35 U.S.C. §§ 102(b) and 103(a), as being unpatentable over the prior art applied in the final Office Action?

GROUPING OF CLAIMS

Under 35 U.S.C. § 282, Appellant submits that the patentability of any one appealed claim is not solely predicated on the patentability of the remaining appealed claim(s). In view of the differences in the features claimed in each separate claims, each claim of this patent application is separately patentable and upon issuance of a patent will be entitled to a separate presumption of validity. Pursuant to 37 C.F.R. § 1.192(5), each pending claim(s) will separately stand or fall in this appeal.

THE ARGUMENT

Appellant's responses to each of the rejections raised in the final Office Action against the currently pending claims (1) are set forth in the concurrently filed Amendment After Final Rejection and (2) are incorporated herein by reference in their entirety. Reconsideration and reversal of the pending rejections are respectfully requested.

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CONCLUSION

In view of the foregoing, Appellant submits that there exists no factual basis to support a conclusion that the present claimed subject matter fails to satisfy the requirements of 35 U.S.C. §§ 102(b) or 103(a) in view of the prior art applied in the final Office Action. It is respectfully submitted that the rejection of the claims on appeal is in error and should be reversed.

To the extent necessary, a petition for an extension of time under 37 CFR 1.136 is hereby made. The Commissioner is hereby authorized to charge any deficiency in the small-entity fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

Willem F. Gadiano
Reg. No. 37,136

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Date: July 5, 2005By: 

Willem F. Gadiano, Reg. No. 37,136

BESSETTE et al.
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APPENDIX A

4. A method for controlling household pests comprising
applying to a location where control of household pests is desired a pesticidally-effective
amount of a composition comprising a pesticidally acceptable carrier and a pesticidally active
ingredient consisting of rosemary oil and phenethyl propionate;

wherein controlling comprises knocking down and killing the household pests.

19. A method for controlling household pests comprising
applying to a location where control of household pests is desired a pesticidally-
effective amount of a composition comprising a pesticidally acceptable carrier and a pesticidally
active ingredient consisting of rosemary oil, peppermint oil, and phenethyl propionate;

wherein controlling comprises knocking down and killing the household pests.

45. A method for controlling household pests comprising
applying to a location where control of household pests is desired a pesticidally-
effective amount of a composition comprising a pesticidally acceptable carrier and a pesticidally
active ingredient consisting of rosemary oil and peppermint oil;

wherein controlling comprises knocking down and killing the household pests.